

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EAT RIGHT FOODS, LTD.,

Plaintiff,

V.

WHOLE FOODS MARKET, INC., *et al.*,

Defendants.

CASE NO. C13-2174RSM

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

I. INTRODUCTION

This matter comes before the Court on Defendant Whole Foods Market, Inc.’s (“WFMI”) Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(2). (Dkt. #21). WFMI argues that this Court lacks personal jurisdiction over it because it is a non-resident holding company that lacks sufficient minimum contacts with the State of Washington. Plaintiff argues that it has met the minimum threshold for demonstrating both general and specific jurisdiction. (Dkt. #25). For the reasons set forth below, this Court GRANTS Defendant’s motion to dismiss.

II. BACKGROUND

This matter arises from allegations of trademark infringement, false designation of origin and unfair competition. Dkt. #16 at ¶¶ 34-43. Plaintiff alleges that it has used the

1 trademark “EAT RIGHT” since 2001 and the trademark “EATRIGHT” since 2003. *Id.* at ¶ 19.
2 Plaintiff further alleges that from 2004 to 2013, Defendants sold products produced by Plaintiff
3 and sold under the trademark “EATRIGHT.” *Id.* at ¶ 30. Plaintiff alleges that Defendants have
4 since sold and marketed products using a trademark confusingly similar to “EATRIGHT”
5 without authorization by Plaintiff, in violation of federal trademark laws and Washington’s
6 Consumer Protection Act. *Id.* at ¶¶ 32-43.
7

8 WFMI asserts that it is a non-resident holding company for other, separate subsidiaries
9 in the Whole Foods family. Dkt. #21 at 2-3. WFMI further asserts that it has no presence in
10 Washington at all – specifically, it does not maintain a place of business in Washington, is not
11 licensed to do business in Washington, it does not own, lease, manage or maintain real property
12 in Washington, it has not appointed a registered agent for service of process in Washington, it
13 does not make, market or sell any goods in Washington, and it conducts no business directly
14 with the public in Washington. *Id.* WFMI also asserts that the other two Defendants, Whole
15 Foods Market Services, Inc. and Whole Foods Market Pacific Northwest, Inc., are not agents of
16 WFMI and they are legally distinct and separate subsidiaries. *Id.* at 3.
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18

19 III. DISCUSSION

20 A. Standard of Review

21 Federal Rule of Civil Procedure 12(b)(2) governs the dismissal of an action based on
22 lack of personal jurisdiction. Where a defendant moves to dismiss a complaint for lack of
23 personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is
24 appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). A
25 plaintiff cannot simply rest on the bare allegations of his Complaint, but rather is obligated to
26 come forward with facts, by affidavit or otherwise, supporting personal jurisdiction. *Amba*
27
28

1 *Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977). Where,
2 as here, the motion is based on written materials rather than an evidentiary hearing, the plaintiff
3 need only make a *prima facie* showing of jurisdictional facts. *Schwarzenegger*, at 800.
4 Uncontroverted factual allegations must be taken as true. Conflicts between parties over
5 statements contained in affidavits must be resolved in the plaintiff's favor. *Id.* A *prima facie*
6 showing means that the plaintiff has produced admissible evidence, which if believed, is
7 sufficient to establish the existence of personal jurisdiction. *Ballard v. Savage*, 65 F.3d 1495,
8 1498 (9th Cir. 1995).

10 Where no applicable federal statute addresses the issue, a court's personal jurisdiction
11 analysis begins with the "long-arm" statute of the state in which the court sits. *Glencore Grain*
12 *Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002).
13 Washington's long-arm statute extends the court's personal jurisdiction to the broadest reach
14 that the United States Constitution permits. *Byron Nelson Co. v. Orchard Management Corp.*
15 95 Wn.App. 462, 465, 975 P.2d 555 (1999). Because Washington's long-arm jurisdictional
16 statute is coextensive with federal due process requirements, the jurisdictional analysis under
17 state law and federal due process are the same. *Schwarzenegger*, at 800-01.

20 The Due Process Clause protects a defendant's liberty interest in not being subject to
21 the binding judgments of a forum with which it has established no meaningful contacts, ties or
22 relations. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72, 105 S. Ct. 2174, 85 L. Ed.
23 2d 528 (1985). In determining whether a defendant had minimum contacts with the forum state
24 such that the exercise of jurisdiction over the defendant would not offend the Due Process
25 Clause, courts focus on the relationship among the defendant, the forum, and the litigation.
26 *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977).

1 Personal jurisdiction exists in two forms, general and specific. *Dole Food Co. v. Watts*,
2 303 F.3d 1104, 1111 (9th Cir.2002). General jurisdiction exists over a non-resident defendant
3 when there is “continuous and systematic general business contacts that approximate physical
4 presence in the forum state.” *Schwarzenegger*, at 801. In the absence of general jurisdiction,
5 the court may still exercise specific jurisdiction over a non-resident defendant. To establish
6 specific jurisdiction, the plaintiff must show that: (1) defendant purposefully availed itself of
7 the privilege of conducting activities in Washington, thereby invoking the benefits and
8 protections of its laws; (2) plaintiff’s claims arise out of defendant’s Washington-related
9 activities; and (3) the exercise of jurisdiction would be reasonable. *Easter v. American West*
10 *Financial*, 381 F.3d 948, 960-61 (9th Cir. 2004); *Bancroft & Masters, Inc. v. Augusta Nat’l*
11 *Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).

14 **B. General Jurisdiction**

15 A defendant is subject to general jurisdiction only where the defendant’s contacts with a
16 forum are “substantial” or “continuous and systematic.” *Bancroft & Masters, Inc. v. Augusta*
17 *Nat’l, Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). As the Ninth Circuit has recently noted,
18 “[g]eneral jurisdiction over a corporation is appropriate only when the corporation’s contacts
19 with the forum state ‘are so constant and pervasive as to render it essentially at home’ in the
20 state.” *Martinez v. Aero Caribbean*, 2014 U.S. App. LEXIS 16163, *8 (9th Cir. Aug. 21,
21 2014)(citation omitted).

22 In *Martinez*, the Ninth Circuit Court of Appeals examined a recent Supreme Court
23 decision regarding the standard under which a court could assert general jurisdiction, noting:
24

25 The Supreme Court’s recent decision in *Daimler* makes clear the
26 demanding nature of the standard for general personal jurisdiction over a
27 corporation. In *Daimler*, the Court held that DaimlerChrysler
28 Aktiengesellschaft (“Daimler”), a German corporation, was not subject to

1 general jurisdiction in California based on the California contacts of its
2 subsidiary, Mercedes-Benz USA (“MBUSA”). MBUSA, a Delaware
3 corporation, is Daimler’s exclusive importer and distributor for the United
4 States. Its principal place of business is in New Jersey, but it has multiple
5 facilities in California and is “the largest supplier of luxury vehicles to the
6 California market. . . . MBUSA’s California sales account for 2.4% of
7 Daimler’s worldwide sales.” The Court assumed that MBUSA would be
8 subject to general jurisdiction in California and that MBUSA’s California
9 contacts could be imputed to Daimler, but it still held that Daimler’s
10 contacts with California were not “so constant and pervasive as to render
11 [it] essentially at home” in California.

12 The Court in *Daimler* rejected the plaintiffs’ argument, also pressed by
13 plaintiffs here, that general jurisdiction is appropriate whenever a
14 corporation “engages in a substantial, continuous, and systematic course of
15 business” in a state. It emphasized that the “paradigm” fora for general
16 jurisdiction are a corporation’s place of incorporation and principal place of
17 business. Only in an “exceptional case” will general jurisdiction be
18 available anywhere else.

19 *Martinez*, 2014 U.S. App. LEXIS at *17-19 (citations omitted).

20 The Court of Appeals’ analysis is applicable to this case. This is not an exceptional
21 case creating jurisdiction outside of the traditional forums. WFMI is incorporated in Texas and
22 its principal place of business is in Austin, TX. Dkt. #22 at ¶¶ 3-4. WFMI does not conduct
23 business in Washington State. Nor does it own, lease or manage any property in this State. *See*
24 *Daimler AG v. Bauman*, ___, U.S. ___, 134 S. Ct. 746, 762 n.20, 187 L. Ed.2d 624 (2014)
25 (“General jurisdiction . . . calls for an appraisal of a corporation’s activities in their entirety,
26 nationwide and worldwide. A corporation that operates in many places can scarcely be deemed
27 at home in all of them.”). Moreover, Plaintiff fails to provide admissible evidence to rebut
28 these contentions. While Plaintiff relies on a number of exhibits attached to the Declaration of
Mark P. Walters to support its contentions, that Declaration will not be considered by the Court
as it is unsigned and therefore inadmissible. *See* Dkt. #27. Accordingly, the Court finds that it
lacks general jurisdiction over Defendant WFMI.

C. Specific Jurisdiction

Likewise, the Court does not find specific jurisdiction over WFMI. Because Plaintiff has failed to submit admissible evidence to demonstrate WFMI's alleged contacts with Washington, the Court is not convinced that WFMI purposefully availed itself of the privilege of conducting activities in Washington, thereby invoking the benefits and protections of its laws, or that Plaintiff's claims arise out of WFMI's Washington-related activities. As a result, the Court need not address whether exercising jurisdiction would be reasonable. For all of these reasons, the Court lacks personal jurisdiction over WFMI.

IV. CONCLUSION

Having reviewed the relevant pleadings, the declarations and exhibits attached thereto, and the remainder of the record, the Court hereby ORDERS:

- 1) Defendant's Motion to Dismiss (Dkt. #21) is GRANTED.
- 2) Whole Foods Market, Inc. ("WFMI") is DISMISSED and the CLERK shall terminate "Whole Foods Market Inc." as a Defendant to this matter.
- 3) The caption of this matter shall be revised to "Eat Right Foods Ltd. v. Whole Foods Market Services, Inc. and Whole Foods Market Pacific Northwest, Inc."

DATED this 15 day of September 2014.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE